

8:27 AM '95
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY
MM Docket No. 94-100

In the Matter of

Amendment of Section 73.202(b),	RM-8509
Table of Allotments,	RM-8549
FM Broadcast Stations.	RM-8550
(Okmulgee, Nowata, Pawhuska,	
Bartlesville, Bixby, Oklahoma, Rogers,	
Arkansas)	

ORDER TO SHOW CAUSE

Adopted: July 6, 1995;

Released: July 17, 1995

By the Chief, Allocations Branch:

1. At the request of Integrated Broadcasting Company, Inc. ("Integrated"), licensee of Station KTHK(FM), Okmulgee, Oklahoma, and KRIG, Inc. ("KRIG"), licensee of Station KRIG(FM), Nowata, Oklahoma, the Commission has before it the *Notice of Proposed Rule Making*, 9 FCC Rcd 4882 (1994). Comments were filed by Rhema Media ("Rhema"), KRIG and Integrated. Counterproposals were filed by Singer Broadcasting Group, Inc. ("Singer"), Johnson Communications, Inc. ("Johnson") and KYFM Radio, Inc. ("KYFM").¹ Reply comments were filed by Singer,² KRIG and Integrated.

2. The *Notice* proposed the substitution of Channel 231C1 for Channel 231C2 at Okmulgee and the modification of Station KTHK(FM) to specify operation on the higher class channel. To accommodate the upgrade at Okmulgee, the *Notice* also optionally proposed the substitution of Channel 286C3 or Channel 285A for Channel 232A at Nowata, Oklahoma, and the modification of Station KRIG(FM) to specify operation on either channel. To accommodate the allotment of Channel 286C3 to Nowata, we also proposed the deletion, without replacement, of

vacant and unapplied-for Channel 285A at Pawhuska, Oklahoma, or the substitution of Channel 280A for Channel 285A at Pawhuska, if an interest in use of the channel was expressed during the pendency of the rule making.

3. Singer opposes the substitution of Channel 286C3 for Channel 232A at Nowata. Instead, it requests the substitution of Channel 287C2 for Channel 287C3 at Bixby and the modification of Station KJMM's (formerly KRMP-FM) construction permit to specify the higher powered channel. Singer states that the allotment of Channel 287C2 to Bixby would allow Station KJMM to serve an additional 194,026 persons within an area of 3,796 square kilometers. In comparison, it states that the allotment of Channel 286C3 to Nowata will result in an increase of only 32,632 persons within a 2,234 square kilometer area. However, Singer suggests that both upgrades can be accomplished if Station KRIG's license is modified to Channel 285A in this proceeding and then KRIG applies for a co-channel upgrade through the Commission's "one-step" upgrade application procedure.³ The transmitter sites for the Nowata and Bixby allotments are located approximately 102 kilometers apart while the Commission's Rules stipulate a minimum distance separation of at least 117 kilometers for first adjacent Class C2 and Class C3 allotments. Therefore, the two proposals are mutually exclusive.

4. In order for us to proceed with our analysis of the competing upgrade proposals at Bixby and Nowata, it is necessary to issue an *Order to Show Cause* to Station KRIG why its license should not be modified to specify operation on Channel 285A in lieu of its present Channel 232A. Integrated has expressed its willingness to reimburse KRIG for the reasonable costs incurred in changing its operating channel. This *Order to Show Cause* is necessary because KRIG has withdrawn its agreement to the modification of its license to specify Channel 285A. However, we will not accept any additional counterproposals because an opportunity has already been provided for the filing of such proposals. Further, although this *Order* affords KRIG an opportunity to object to the proposed channel change, it does not afford an additional opportunity to comment on the merits of the proposals set forth in the *Notice of Proposed Rule Making* or the proposal advanced in Singer's counterproposal. See *Angola, Indiana, et al.*, 5 FCC Rcd 2000 (1990).

¹ Public Notice of the filing of the counterproposals by KYFM and Singer was given on November 18, 1994, Report No. 2041. However, on November 17, 1994, KYFM withdrew its counterproposal (RM-8549) which requested the upgrading of Station KYFM(FM), Bartlesville, Oklahoma, from Channel 261A to either Channel 286C3 or Channel 261C1. In its request for dismissal, KYFM, in compliance with Section 1.420(j) of the Commission's Rules, states that no consideration has been or will be received in exchange for the dismissal of its comments and counterproposal. Therefore, no consideration of its comments and counterproposal will be given and its proposal will be dismissed. Johnson also filed comments and a counterproposal requesting the substitution of Channel 232C2 for Channel 232C3 at Rogers, Arkansas, and the modification of Station KAMO-FM's license accordingly. However, there is no conflict with any of the proposals under consideration herein and thus is not a counterproposal. Rather, Johnson's proposal is contin-

gent upon the migration of Station KRIG from Channel 232A to either Channel 286C3 or Channel 285A. However, we will accept Johnson's pleading as comments in support of the deletion of Channel 232A from Nowata.

² Singer's reply comments were accompanied by a "Motion to Accept Late-Filed Reply Comments" because they were filed with the Commission on the day after the reply comment deadline specified in the *Notice*. However, we do not consider these reply comments to be late-filed because of the issuance of the Public Notice on November 18, 1995, announcing the filing of counterproposals in this proceeding. The issuance of a Public Notice announcing the filing of a counterproposal extends the reply comment deadline to coincide with the response time specified in the counterproposal Public Notice. See *Corinth, Hadley and Queensbury, New York*, 2 FCC Rcd 3316 (1987).

³ See *Amendment of Commission's Rules to Permit FM Channel and Class Modifications by Application*, 8 FCC Rcd 4735 (1993).

5. Channel 285A can be allotted to Nowata in compliance with the Commission's minimum distance separation requirements at Station KRIG's presently licensed transmitter site.⁴

6. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, KRIG, Inc., licensee of Station KRIG, Nowata, OK, SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 285A as proposed herein instead of the present Channel 232A.

7. Pursuant to Section 1.87 of the Commission's Rules, KRIG, Inc., may, not later than August 31, 1995, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on KRIG, Inc. to furnish additional information. If KRIG, Inc. raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, KRIG, Inc. will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

8. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Order to Show Cause* to the licensee of Station KRIG as follows: KRIG, Inc., P.O. Box 877, Bartlesville, OK 74005.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served

on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

⁴ The coordinates for Channel 285A at Nowata are 36-44-35

North Latitude and 95-45-17 West Longitude.